appellant and his co-owners held the estate in partnership in unequal shares. The partnership of course was not a separate legal entity from its members, but the erstwhile partners became the only shareholders, to the extent of their shares in the partnership, in the company to which the assets of the partnership were transferred, there being no outside shareholders in the company. The position then was that whereas formerly the partners had direct ownership of the estate, with the formation of the company they retained ownership indirectly through their shares in the company. In other words, shares in the land became shares in the company which became the registered owner of the land.

In the final analysis the answer to this appeal is fairly simple. The transaction by the appellant in this case must be taken as an isolated transaction. As an isolated transaction, it was an adventure in the nature of trade. In the absence of a definition of "trade" extending that term to an adventure in the nature of trade, as the English Income Tax Acts do, this single transaction did not constitute a trade of the appellant within the meaning of section 10(1)(a) of the Income Tax Ordinance, 1947. As it was but a single business transaction carried out by the appellant and not part of a business carried on by him, it did not constitute the business of the appellant either within the meaning of the same section. The profit arising therefrom is therefore not subject to tax under that section.

In the result, I would allow the appeal with costs here and in the court below, reverse the judgment of the High Court, annul the assessment made by the Comptroller of Income Tax and order a refund of the income tax paid by the taxpayer under the assessment.

Azmi L.P. and **Suffian F.J.** concurred.

Appeal allowed.

Solicitors: *Yeo & Yeo.*

PENGURUS WILAYAH UTARA, BAHAGIAN KENDERAAN MARA, KEDAH v. HASNAH

[O.C.J. (Wan Suleiman J.) June 25, 1970]

[Alor Star — Civil Appeal No. 13 of 1969]

Master and Servant — Maternity allowance — Employer — Whether MARA an employer under the Employment Ordinance, 1955, s. 37 — Majlis Amanah Ra'ayat Act 1966, s. 39(2).

The respondent in this appeal claimed before the assistant state commissioner for labour for maternity allowance at the rates prescribed in the Employment Ordinance, 1955. The appellant contended that MARA was not an employer under that Ordinance, it being a Government body, and that section 37 of the Ordinance governing maternity allowance payable to female employees did not apply to employees of MARA. The assistant commissioner rejected this argument and gave judgment for the respondent.

The main issue at law to be decided was whether MARA could superimpose upon the terms of service of its employees the provisions of Cap. C. of the General Orders of Malaysia and regulations made under the MARA Act to the exclusion of the appropriate provisions of the Employment Ordinance.

Held, dismissing the appeal: MARA is merely a statutory corporation. Nowhere in the Majlis Amanah Ra'ayat Act is there any manifest provision which would tend to indicate that Parliament intended to repeal, alter or derogate from the special provisions of the Employment Ordinance 1955.

Cases referred to:-

(1) *Seward* v. *The Vera Cruz* [1884] 10 A.C. 59 at p. 68.

(2) *Barker* v. *Edger & Ors.* [1898] A.C. 748 at p. 754.

CIVIL APPEAL.

Narayanan for the appellant.

Respondent in person.

Cur. Adv. Vult.

Wan Suleiman J.: This is an appeal against the decision of the assistant state commissioner for labour.

The respondent an employee of Majlis Amanah Ra'ayat (MARA) commenced work on February 1, 1966 as a clerk for the appellant. Her claim before the assistant state commissioner was for maternity allowance at the rates prescribed in the Employment Ordinance, 1955. The Pengurus Wilayah Utara of MARA who appeared at that hearing on behalf of the appellant contended that MARA was not an employer under the Employment Ordinance, 1955 being a Government body, and among other things he contended that section 37 of the Employment Ordinance, 1955 governing maternity allowance payable to female employees under the Ordinance does not apply to employees of MARA and that instead the provisions of Chapter C. Order 17 of the General Orders of Malaysia are applicable. The assistant state commissioner rejected this argument and gave judgment to the respondent.

At the hearing of the appeal Mr. Narayanan for the appellant raised two grounds of appeal. First he urged that under section 39(2) of the Majlis Amanah Ra'ayat Act 20 of 1966 all rules and regulations made under the provisions of the Rural and Industrial Development Authority (RIDA) Ordinance, 1953 in force immediately before the coming into force of the MARA Act insofar as they are not inconsistent with the provisions of that Act shall be deemed to have been made under the Act and shall continue in force until other provisions are made under the Act or until the date upon which they expire. He produced a circular, RIDA circular No. 12 of 1964 which he conceded was a departmental circular but which he contended would govern the contract of service of employees of MARA by virtue of section 39(2) of the Act earlier referred to.

He also referred to section 16 sub-section (1) of the RIDA Ordinance, 1953 which empowered that authority to employ *inter alia* such officers and servants as may be necessary for the purposes of that Ordinance, and to section 51(g) of that Ordinance which empowered the Rural and Industrial Development Authority with the appropriate approval to make regulations not inconsistent with the provisions of the Ordinance generally for the exercise of their powers and duties under the provisions of that Ordinance. I was asked to regard RIDA circular No. 12 of 1964 which it was conceded was never gazetted and therefore is not subsidiary legislation made under that Ordinance,

as being nevertheless regulations governing service made under the two sections afore-mentioned.

Section 22(1) of the Interpretation and General Clauses Ordinance, 1948, which was still in force at the time of the issue of this circular, states that all subsidiary legislation shall be published in the *Gazette*, unless it is otherwise expressly provided in such Ordinance. There being no such express provision in the RIDA Ordinance, 1953, circular No. 12 of 1964 is therefore not subsidiary legislation and cannot in my view be the sort of rule or regulation which because of section 39(1) of the MARA Act is continued in force.

However, the main issue at law to be decided is whether the MARA can superimpose upon the terms of service of its employees the provisions of Chapter C. of the General Orders of Malaysia and regulations made under the MARA Act 1966, to the exclusion of the appropriate provisions in the Employment Ordinance, 1955.

Section 7 of the Employment Ordinance, 1955 reads as follows: —

"7. Except as provided in section 6 of this Ordinance, no condition of any contract of service shall be contrary to the provisions of this Ordinance and any such condition which is contrary to such provisions shall be void and of no effect."

The proviso to section 6 of that Ordinance is not applicable in the present appeal.

MARA is as section 3 of the Act makes it clear, merely a statutory corporation. Section 63 of the Interpretation and General Clauses Act 1967, which is substantially the same as section 55 of the 1948 Ordinance, states that no written law shall in any manner affect the rights *inter alia* of the Government unless it is especially provided or it appears by necessary implication that Government is bound thereby, cannot apply to exclude this statutory corporation which is not the Government from the operation of the Employment Ordinance, 1955. Whereas there appears to me nothing to prevent MARA from adopting Chapter C. of the General Orders of Malaysia and provision of that chapter of the General Orders thereby made applicable to the conditions of service of MARA employees which happens to be contrary to the provisions of the Employment Ordinance, 1955 will by virtue of section 7 of that Ordinance be void to that extent.

It may be argued that under section 10(1) of the MARA Act the Majlis "may appoint on such terms and conditions as the Majlis may think desirable such servants as may be necessary for the carrying out of the purposes of the Act", and that the powers thereby given would exclude the operation of the Employment Ordinance.

But the general maxim is *generalia specialibus non derogant*.

As was said in *Seward* v. *The Vera Cruz*[1]

"where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so."

Again as Lord Hobhouse commented in the Privy Council decision of *Barker* v. *Edger & Ors.*[2]

"When the Legislature has given its attention to a separate subject, and made provision for it, the presumption is that a subsequent general enactment is not intended to interfere with the special provision unless it manifests that intention very clearly."

Nowhere in the Majlis Amanah Ra'ayat Act 1966 is there any manifest provision which would tend to indicate that Parliament intended to repeal, alter or derogate from the special provisions of the Employment Ordinance 1955. This appeal is accordingly dismissed with costs.

Appeal dismissed.

Solicitors: *Ng Ek Teong, Zain & Selvarajah.*

WONG KON POH v. NEW INDIA ASSURANCE CO. LTD.

[A.C.J. (Yong J.) June 29, 1970]

[Kuala Lumpur — Civil Appeal No. 19 of 1969]

Insurance — Motor insurance — Risk against theft — Whether loss by robbery covered by policy — Whether "theft" is synonymous with "robbery".

This was an appeal against the order of the magistrate dismissing the appellant's claim made under a policy of insurance for the loss of his motor cycle which was taken from him in his presence and against his will by four men. The magistrate held that this was robbery and that the loss was not caused by any of the perils insured against. The relevant part of the policy read: "The company will indemnify the insured against loss of or damage to the motor vehicle and its accessories and spare parts whilst thereon. (b) by fire external explosion self-ignition or lighting or burglary, housebreaking or theft."

The question put to the court was whether the word "theft" as used in the policy was synonymous with the word "robbery" and on the evidence before the court whether the magistrate was justified in finding that the loss was caused by robbery and not by theft.

Held, dismissing the appeal: (1) the words "theft" and "robbery" are not synonymous;

(2) the magistrate was right in holding that the loss was due to robbery and not theft.

Cases referred to:-

(1) *Roberts* v. *Anglo-Saxon Insurance Association Ltd.* (1927) 43 T.L.R. 496.

(2) *Leo Rapp Ltd.* v. *McClure* [1955] 1 Ll. Rep. 295.

CIVIL APPEAL.

Teoh Hooi Leong for the appellant.

M. S. Naidu for the respondents.

Yong J.: This is an appeal against the order of the magistrate dismissing the appellant's claim made under a policy of insurance for the loss of his motor cycle which was taken from him in his presence and against his will by four men. The magistrate held that this was robbery and that the loss was not caused by any of the perils insured against.